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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/658,016	09/08/2000	Kenneth D. Simone JR.	068520.0107	2773

7590 07/07/2004

Baker Botts LLP
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EXAMINER	
MAHMOUDI, HASSAN	

ART UNIT	PAPER NUMBER
2175	

DATE MAILED: 07/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/658,016	SIMONE ET AL.	
	Examiner	Art Unit	
	Tony Mahmoudi	2175	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on *17 June 2004*. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1-14*.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____

10. ☐ Other: _____

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Continuation of 5. does NOT place the application in condition for allowance because:

The applicant's arguments presented in the After Final Request for Reconsideration, filed on 03-June-2004 have been fully considered but are not found persuasive, and the claim limitations of the "finally rejected" claims are still met by the Penn (U.S. Patent No. 5,848,198), Wise et al (U.S. Patent No. 6,130,676), and Marcus (U.S. Patent No. 5,481,668) references.

In response to the applicant's argument that "Penn fails to disclose preparing the one function portion for inclusion in the project definition by permitting interactive user adjustment of working information which will become the control information, while simultaneously displaying a sample image processed according to the function definition corresponding to the one function portion as characterized by the current state of the working information", the argument has been fully considered but is not found persuasive, because Penn teaches "preparing the one function portion for inclusion in the project definition by permitting interactive user adjustment of working information which will become the control information" (see column 19, lines 10-17), and he teaches "simultaneously displaying a sample image processed according to the function definition corresponding to the one function portion as characterized by the current state of the working information" (see column 19, lines 31-43.)

In response to the applicant's argument that "there is no teaching, suggestion, or motivation to combine or modify the teachings of Penn and Wise either in the reference themselves, or in the knowledge generally available to one of ordinary skill in the art", the argument has been fully considered but is not found persuasive, because the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner established the motivation in the knowledge generally available to one of ordinary skill in the art, to have modified Penn by the teaching of Wise et al, because including a blur function definition for which the specified effect is the addition to an image of a blurring effect, would enable the user to modify image properties to a desired setting for enhanced viewing of the displayed image.